

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARK JEFFREY KINSELLA,)	CIVIL ACTION NO. 17-1472
)	
Plaintiff,)	JUDGE JOY FLOWERS CONTI
)	
)	
v.)	
)	
)	
KYLE R. ALLSHOUSE , individually,)	
Defendant.)	
)	
)	

MEMORANDUM OPINION

More than two years after the inception of this civil rights action filed pursuant to 42 U.S.C. § 1983, this court entered a case management order setting dates for the filing of motions for summary judgment. (ECF No. 92.) One month before those motions were due, however, counsel for plaintiff Mark Jeffrey Kinsella (“Kinsella”) filed a motion to withdraw as counsel. (ECF No. 97.) On June 5, 2020, defendant Kyle R. Allshouse (“Allshouse”)—in accordance with the court’s case management order—filed a motion for summary judgment. (ECF No. 99.) On July 30, 2020, the court held a hearing on the motion to withdraw, granted the motion, and gave Kinsella sixty days to obtain a new counsel to prosecute this case. The court instructed that no further extensions of time would be permitted and that Kinsella’s response to the motion for summary judgment was due on or before October 28, 2020, or within thirty days of Kinsella’s new counsel entering his or her appearance in the case.

Kinsella did not obtain new counsel within the timeframe set by the court and did not file a response to the motion for summary judgment on or before October 28, 2020; rather, on October 30, 2020, Kinsella filed a motion for an extension of time for an additional six to eight weeks to obtain counsel. (ECF No. 111.) On November 6, 2020, the court—because the hardships presented by Kinsella in his request—granted him until December 4, 2020, to obtain a new lawyer. The court instructed that if Kinsella did not obtain a new lawyer, his response to the motion for summary judgment was due on or before December 11, 2020. The court ordered that

no further extensions would be permitted. On the same day, i.e., November 6, 2020, Allshouse filed a response in opposition to Kinsella's request for an extension of time. (ECF No. 112.)

On December 4, 2020, Kinsella filed a second request for an extension of time to obtain counsel to represent him in this case. (ECF No. 113.) He requested a continuance of *twelve months* because the difficulty he is having to obtain a lawyer because, among other reasons, the COVID-19 pandemic. He informed the court that he intends on obtaining counsel from another state.

This court gave Kinsella 127 days (or four months and four days) to obtain new counsel in this case, which is already more than three years old. Allshouse's motion for summary judgment has been pending for more than six months. Under those circumstances, any extension of time—especially a twelve-month extension of time—is unwarranted and would run afoul of the Federal Rules of Civil Procedure, which must be “employed by the court and the parties to secure the just, *speedy*, and inexpensive determination of every action and proceeding.” FED. R. CIV. P. 1 (emphasis added). Kinsella's request will, therefore, be denied with prejudice. As this court previously ordered, Kinsella's response to the motion for summary judgment is due on or before December 11, 2020. Kinsella's failure to file a response to the motion for summary judgment will be deemed consent to the dismissal of this case with prejudice for Kinsella's failure to prosecute.

An appropriate order will be entered.

By the court,

Dated: December 8, 2020

/s/ JOY FLOWERS CONTI

Joy Flowers Conti

Senior United States District Court Judge